



**State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095  
(603) 271-3503 FAX (603) 271-2867



Donald Lee  
5 Roy Avenue  
Beverly, MA 01915

Re: Lots 25 & 26  
Lattie Shore, Ossipee  
Wet. File # 1988-2345

**ADMINISTRATIVE ORDER  
No. WD # 2002-15**

April 17, 2002

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division to Donald R. Lee Sr. pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03301.
2. Donald R. Lee Sr. is an individual having a mailing address of 5 Roy Ave, Beverly, MA 01915.

**C. STATEMENTS OF FACTS AND LAW**

1. RSA 482-A authorizes DES to regulate dredging, filling, and construction in surface waters of the state, shorelines of surface waters, and in wetlands. RSA 482-A:11, I authorizes DES to adopt rules to implement the wetlands law. Pursuant to this authority, the Commissioner of DES has adopted NH Admin. Rules Wt 100-700. DES became the successor to the NH Wetlands Board for purposes of implementing this program in August 1996.
2. RSA 482-A:14, III provides that failure, neglect or refusal to comply with RSA 482-A or rules adopted under that chapter, or an order or condition of a permit issued under RSA 482-A, and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by RSA 482-A shall be deemed violations of RSA 482-A.
3. Mr. Lee owns two parcels of real property located on Lattie Shore in Ossipee, NH identified on Town of Ossipee Tax Map 39 as Lot 26 and Lot 25. Lot 26 and Lot 25 are located at the mouth of the Lovell River, where the river empties into Ossipee Lake ("Lake"). Mr. Lee purchased Lot 25 in 1999; Lot 26, which is closer to the Lake than is Lot 25, has been in Mr. Lee's family for many years.
4. On April 12, 1989, DES personnel inspected Lot 26 and found an unpermitted structure that was functioning as a breakwater extending into the Lake, from and perpendicular to the original shoreline of Lot 26. The landward part of the structure was constructed of concrete block, 3-4

blocks high and approximately 50 feet long; the lakeward part of the structure was constructed of gravel and rock, extending an additional 40 feet into the Lake from the concrete block portion. An estimated 30 to 50 cubic yards of sand was piled and spread above and below the water level behind this structure, primarily on the lakeward side of the gravel/rock end.

5. On July 17, 1989, DES received a letter from Mr. Lee in response to the Wetlands Board Removal Consideration Notice issued on June 28, 1989 ("Removal Notice"). In the letter, Mr. Lee stated that Lot 26 had been in his family for 30 years, since 1958. Mr. Lee indicated that his family had brought in sand every few years since the early 1960s, and that their intention was to protect the property from erosion. Mr. Lee indicated that the 50-foot breakwater that was made with cement blocks had been removed from the lake and that he had placed the blocks along his high water mark, about 15 feet from the lakeshore, in order to protect his trees and shoreline from erosion. Mr. Lee asked the Wetlands Board to let him know if there was any objection to this. Mr. Lee also indicated that he had removed the piles of sand to the best of his ability and had pleaded no-contest to a District Court case brought against him by the Ossipee Conservation Commission (for knowingly filling a bank and constructing a breakwater without a permit), for which he had been fined \$500 (half of which was suspended).

6. On August 10, 1989, DES personnel inspected Lot 26 and observed that the concrete block portion of the breakwater had been removed and that most of the gravel/rock portion appeared to have been removed. The concrete blocks were placed above the high water mark on Lot 26.

7. The Wetlands Board Minutes for August 22, 1989 stated that a motion was made "to drop the fine consideration with the finding that the applicant responded to the removal request." The motion was unanimously approved by the Wetlands Board. A letter was sent to Mr. Lee on September 7, 1989 stating such findings.

In 1993 and 1994, DES received more complaints about a structure on Lot 26.

9. On July 22, 1994, DES personnel inspected Lot 26 to check for compliance with the Removal Notice. During the inspection, DES inspectors observed that:

a. Lot 26 appeared to be in compliance, but it was difficult to tell how much of the gravel/rock portion of the wall actually had been removed; and

b. Sand was accumulating next to the wall, clogging the mouth of the Lovell River.

10. By letter dated September 13, 1994, DES notified Mr. Lee that removal of the wall and sand fill in response to the Removal Notice was not sufficient to prevent further buildup of sediment, and that further removal of the wall and sand fill was required.

11. On November 7, 1995, DES personnel inspected Lot 26 and observed:

a. No change in the wall since 1989; and

b. Indications that the wall may have contributed to the build-up of sediment.

12. On May 1, 2001 and July 25, 2001, DES personnel inspected Lot 26 and Lot 25 in response

to complaints received that additional work had been done on the lots.

13 During the May 1 and July 25, 2001 inspections, DES personnel noted the following:

a. A concrete block and rock wall had been constructed on Lot 26 ("Lot 26 Wall"), extending into the Lake perpendicular to the shoreline of Lot 26. The Lot 26 Wall was in disrepair during the May 1, 2001 field inspection as a result of ice damage during the winter of 2000-2001. During the July 25, 2001 field inspection, DES personnel observed that the Lot 26 Wall had been rebuilt and was approximately 70 feet long. Approximately 51 feet of the Lot 26 Wall was constructed of concrete blocks, with the remaining approximately 19 feet on the lakeward end consisting of stone 6-15 inches in diameter.

b. A wall constructed entirely of stone had been constructed on Lot 25 ("Lot 25 Wall"), extending into the Lake perpendicular to the shoreline of Lot 25. The Lot 25 Wall was approximately 18 feet, 11 inches in length.

14. DES has no record of a permit for the construction or reconstruction of the Lot 26 Wall or of a permit for the construction of the Lot 25 Wall.

15. According to DES Dam Bureau records, the normal high water mark for Ossipee Lake is 407.5 feet above sea level ("ASL"). On July 25, 2001, the measuring rod at the Ossipee Lake Dam read 407.1 feet ASL. DES records also show that the natural high water mark for Ossipee Lake (prior to construction of the dam) is 410 feet ASL.

16. Approximately 38 feet of the Lot 26 Wall lies below the normal high water mark of 407.5 feet ASL, and the entire wall lies below the natural high water mark of 410 feet ASL.

17. The Lot 25 Wall is located entirely below the normal high water mark of 407.5 feet ASL.

18 Both the Lot 26 Wall and Lot 25 Wall are located below the bank of Ossipee Lake.

19. On August 1, 2001, DES issued a Letter of Deficiency ("LOD") to Mr. Lee regarding the Lot 26 Wall and the Lot 25 Wall. The LOD requested Mr. Lee to:

- a. Remove the walls;
- b. Operate any removal equipment landward of the high water mark of Lake Ossipee;
- c. Install siltation and erosion controls if necessary to prevent water quality degradation;
- d. Document the removal with photographs; and
- e. Submit the photos to DES by October 15, 2001.

20 As of the date of this Order, DES has not received a response to the LOD from Mr. Lee.

21. Comparison of historic (1970) with current (after 1992) aerial photos shows that some of the sand and sediment in the sandbar at the mouth of the Lovell River has migrated there from the beach of Lot 26.

22. RSA 482-A:3, I, orders that "No person shall...fill...or construct any structures in or on any bank...in and adjacent to any waters of the state without a permit from [DES]."

23. On March 14, 2002, DES personnel reinspected Lot 26 and Lot 25 to review on-site conditions and found that the violations were continuing and no restoration had occurred.

#### **D. DETERMINATION OF VIOLATIONS**

1. Donald R. Lee, Sr. has violated RSA 482-A: 3, I by constructing a structure in and adjacent to and on the bank of Ossipee Lake on Lot 26 without a permit from DES.
2. Donald R. Lee, Sr. has violated RSA 482-A: 3, I by constructing a structure in and adjacent to and on the bank of Ossipee Lake on Lot 25 without a permit from DES.
3. Donald R. Lee, Sr. has violated RSA 482-A: 3, I by causing accumulation and deposition of sand and sediment adjacent to the walls built in and adjacent to the bank of Ossipee Lake.

#### **E. ORDER**

Based on the above findings, DES hereby orders Donald R. Lee, Sr. as follows:

By June, 1, 2002, completely remove both the Lot 26 Wall and the Lot 25 Wall, with the following conditions:

- a. Both walls to be removed from DES jurisdiction
  - b. Any equipment used for removal to be operated landward of the high water mark of Lake Ossipee.
  - c. Siltation and erosion controls shall be installed to prevent any water quality degradation
  - d. Photos documenting removal to be submitted within 10 days of completing the removal
2. Retain a hydrogeologist or sedimentologist ("consultant") to identify the origin of the sandbar material located lakeward of Lot 25 and Lot 26, and submit the report prepared by the consultant by June 30, 2002.
  3. If the consultant determines that some or all of the sandbar material is eroding from Lot 25 or Lot 26, submit by August 30, 2002 a remediation and restoration plan, prepared by the consultant, for removal of the sandbar and restoration of the lake bottom of Ossipee Lake.
  4. Carry out restoration and removal of sand deposition in Ossipee Lake upon approval by and as conditioned by DES.
  5. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, other than appeals, to DES as follows:

Mary Ann Tilton  
DES Water Division  
6 Hazen Drive, PO Box 95  
Concord, NH 03302-0095

fax: (603) 271-6588  
e-mail: [mtilton@des.state.nh.us](mailto:mtilton@des.state.nh.us)

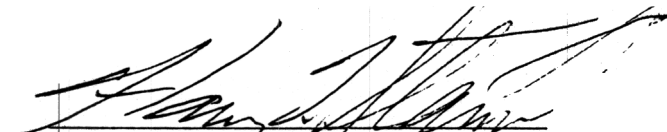
## F. APPEAL

Any party aggrieved by this Order may apply for reconsideration with respect to any matter determined in this action within 20 days from the date of the Order. A motion for rehearing must describe in detail each ground for the request. DES may grant a rehearing if in its opinion, good reason is provided in the motion. Filing an appeal or motion for reconsideration of the Order will not automatically relieve Mr. Lee of the obligation to comply with the Order.

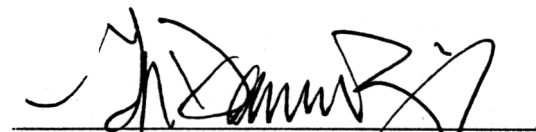
## G. OTHER PROVISIONS

Please note that RSA 482-A:13 and RSA 482-A:14 provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Donald R. Lee, Sr. remains obligated to comply with all applicable requirements. DES will continue to monitor Donald R. Lee, Sr.'s compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Carroll County Registry of Deeds so as to run with the land.



Harry T. Stewart, P.E., Director  
Water Division



George Dana Bisbee  
Assistant Commissioner

Certified Mail/RRR: 7099 3400 0003 0695 3437

cc: Gretchen Rule, Administrator, DES Legal Unit  
Mark Harbaugh, DES Enforcement Attorney  
Public Information Officer, DES Public Information Center  
Jennifer Patterson, Senior Asst. Attorney General, EPB, NHDOJ  
Carroll County Registry of Deeds  
Ossipee Selectmen  
Ossipee Conservation Commission  
Ossipee Bluffs Association